



Federal Communications Commission
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Re: File No. BTCCDT-20131226AAX
KEVN-TV, Rapid City, SD, Fac. Id. No. 34347
KIVV-TV, Lead, SD, Fac. Id. No. 34348

Dear Counsel:

As set forth in greater detail below, we grant the above-captioned application for transfer of control of television licenses from Mission TV, LLC ("Mission") to Gray Television Group, Inc. ("Gray"). We also grant Gray authority to continue operating KIVV-TV, Lead, South Dakota as a satellite in the Rapid City, South Dakota Nielsen Designated Market Area ("DMA"), pursuant to Note 5 of Section 73.3555 of the Commission's rules.¹ The station has operated as a satellite since 1959.²

Continuing Satellite Waivers. In *Television Satellite Stations*,³ the Commission established the requirement that all applicants seeking to transfer or assign satellite stations justify continued satellite status by demonstrating compliance with a three-part "presumptive" satellite exemption standard applicable to new satellite stations. The presumptive satellite exemption is met if the following three public interest criteria are satisfied: (1) there is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase and operate the satellite as a full-service station.⁴ If an applicant does not qualify for the presumption, the Commission will evaluate the proposal on an *ad hoc* basis and grant the application if there are compelling circumstances that warrant approval.⁵

¹ 47 C.F.R. § 73.3555, Note 5.

² File No. BTCCDT-20131226AAX, Request for Continuation of Satellite Waiver ("Satellite Waiver Request").

³ *Television Satellite Stations Review of Policy and Rules*, Report and Order, 6 FCC Rcd 4212, 4215 (1991).

⁴ *Id.* at 4213-14.

⁵ *Id.* at 4212.

With regard to the first criterion, we note that, following the digital transition, full-power television stations have a digital Principal Community contour that serves a much larger area than their former analog City Grade contour. Thus, as we stated previously, the Principal Community contour is not an equivalent standard to use in determining whether a proposed satellite qualifies for the presumptive satellite exemption to the duopoly rule.⁶ Here, Gray acknowledges that it cannot satisfy the first criterion because the stations' City Grade contours overlap but points to a previous case approving a satellite waiver for the station in which the Video Division concluded that the City Grade contour overlap was "not as substantial as in other cases."⁷ Gray further notes that, because of the mountainous terrain in western South Dakota, it is difficult to receive a reliable signal from both KEVN-TV and KIVV-TV in much of the area of overlap.⁸

Regarding the second criterion, Gray relies on the Commission's "transmission" test to demonstrate that it provides service to an underserved area. That test deems an area underserved if there are two or fewer full-power television stations (including commercial, noncommercial, and satellite stations) licensed to the proposed satellite's community of license. Here, KIVV-TV and KHSD-TV, a satellite of KOTA-TV, Rapid City, are the only two television stations licensed to Lead, South Dakota.⁹

Under the third criterion, an applicant must show that no alternative operator is ready and able to construct, or to purchase and operate, the proposed satellite as a full-service station.¹⁰ Gray notes that, in the 15 years that Mission has owned the station, no potential buyer has expressed interest in owning KIVV-TV on a standalone basis.¹¹ Gray further notes that previous Commission cases have determined that KIVV-TV could not survive as a standalone station.¹² Gray notes that the Rapid City DMA remains one of the smallest in the country and that KIVV-TV reaches only 2,010 of the 98,020 households in the DMA.¹³ Each of the four major networks already have affiliates in the DMA, meaning for the station to operate as a standalone it would need to affiliate with a less popular network or operate as an independent station, Gray notes. Given that it serves only a small portion of the DMA, it is unlikely the station could survive under either scenario, Gray contends.¹⁴

Although the instant request does not satisfy the Commission's presumptive satellite exemption standard, Gray has provided information sufficient to warrant continued satellite operation for KIVV-TV under our *ad hoc* analysis. Given the station's history as a satellite since 1959, the limited population of the DMA, and the fact that the other major network affiliates in the DMA also rely on satellites, it is unlikely that an alternative operator would be willing and able to operate the station as stand-alone

⁶ *New Young Broadcasting Holding Company, Inc.*, Letter Decision, 25 FCC Rcd 7518, 7519 (Vid. Div. 2010).

⁷ Satellite Waiver Request at 2 (citing *KEVN, Inc.*, File Nos. BTCCT-980310IA-IB, 1800E4-SAM, Letter Decision (Vid. Div. 1998)).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Television Satellite Stations Review of Policy and Rules*, 6 FCC Rcd at 4215.

¹¹ Satellite Waiver Request at 2.

¹² *USA Broadcasting, Inc.*, File Nos. BALCT-980624IA-IB, 180E1-LSS, Letter Decision (Vid. Div. 1998); *KEVN, Inc.*, File Nos. BTCCT-980310IA-IB, 1800E4-SAM; *Heritage Media*, File No. BTCCT-950911KF, 1800E4AL, Letter Decision (Vid. Div. 1996).

¹³ Satellite Waiver Request at 2.

¹⁴ *Id.* at 3.

facility. Accordingly, we find that the continued operation of KIVV-TV as a satellite of KEVN-TV would serve the public interest.

Furthermore, having carefully reviewed the application, we find that the applicant is fully qualified and conclude that the grant of the application would serve the public interest.

Current Renewals. It is Commission policy, in multi-station transactions, to grant transfer of control applications while renewal applications are pending as long as there are no basic qualification issues pending against the transferor or transferee that could not be resolved in the context of the transfer proceeding, and the transferee explicitly assents to standing in the stead of the transferor in the pending renewal proceeding.¹⁵ The above-captioned Mission stations, whose sale is part of the broader transaction involving the transfer of control of approximately twelve full-service television stations from Hoak Media, LLC., to Gray Television Group, Inc., have applications pending before the Commission for renewal of broadcast licenses. None of these renewals has petitions or other matters currently pending that present a basic character qualification issue. Gray has submitted a statement explicitly agreeing to stand in the stead of the transferor in any renewal application that is pending at the time of the consummation of the transfer.¹⁶ Therefore, we will apply the policy set out in *Shareholders of CBS* to those applications.

ACCORDINGLY, IT IS ORDERED, That the application for transfer of control of the licenses for stations KIVV-TV, Lead, South Dakota and KEVN-TV, Rapid City, South Dakota, lead file no. BTCCDT-20131226AAX, IS GRANTED. IT IS FURTHER ORDERED, That Gray's request for a continuing waiver to operate KIVV-TV, Lead, South Dakota as a satellite station of KEVN-TV, Rapid City, South Dakota, pursuant to 47 C.F.R. § 73.3555, Note 5, IS GRANTED.

Sincerely,

Hossein Hashemzadeh
Deputy Chief, Video Division
Media Bureau

¹⁵ *Shareholders of CBS Corporation*, Memorandum Opinion and Order, 16 FCC Rcd 16072, 16072-73 (2001).

¹⁶ File No. BTCCDT-20131226AAX.